IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE SECOND DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT PETITION NO : 759 of 1999

Between:

The Depot Manager, APSRTC,

Godavarikhani Depot

..... PETITIONER

AND

1. Dasari Narsingh, S/o.Balkishan,

aged about 46 years, Occ: Ex-Driver,

E.3080027, R/o.H.No.6-6-650,

Dr.Ambedkarnagar, Karimnagar

2. Industrial Tribunal-cum-Labour Court,

Godavarikhani, rep. by its

Presiding Officer

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to pleased to issue a writ, order or direction more particularly one in the nature of writ of certiorari and call for the records relating to I.D.No.91 of 1994 on the file of the 2nd respondent herein viz., Industrial Tribunal-cum-Labour Court, Godavarikhani rep.by its Presiding Officer and quash the same as illegal, void and without jurisdiction.

Counsel for the Petitioner: SMT.G.JYOTHI KIRAN

Counsel for the Respondent No.1: MR.K.VASUDEVA REDDY

Counsel for the Respondent No.2: None appeared

The Court made the following:

ORDER:

This writ petition is directed against the award dated 24.01.1997 passed by the Industrial Tribunal-cum-Labour Court. Godavarikhani (for short 'The Tribunal') in I.D.No.91 of 1994, wherein the claim of the workman was answered in his favour and management was directed to reinstate the workman with continuity of service and attendant benefits in respect of increments and with half of the backwages.

2. It is the case of the petitioner/management that the 1st respondent/workman while driving the bus No.AEZ-5464 Deluxe from Hyderabad to Godavarikhani and when the bus reached Ramannaguda village, drove the bus in a rash and negligent manner and dashed against a lorry which came in the opposite direction and caused an accident. In fact, in the domestic enquiry conducted in this regard, it was proved that the driver was rash and negligent in driving the bus and causing the accident, which resulted the death of one passenger tranvelling in the lorry and injuries to six passengers traveling in the bus. After conducting a detailed enquiry into the matter, the 1st respondent/workman was removed from service. Aggrieved by the same, the workman filed an appeal and that was also dismissed. Thereafter he raised an Industrial dispute under Section 2-A(2) of the Industrial Disputes Act. The management filed a detailed counter denying the allegations made by the workman.

3. Before the Tribunal, though no oral evidence was let in, exhibits

M1 to M4 were marked on behalf of the management. After considering the entire evidence on record, the Tribunal came to the conclusion that the only material placed is circumstantial evidence namely Accident Enquiry Committee Report and the statement of B.V.S.Subbarao. The said Subbarao has no personal knowledge of the accident. The principle that the accident will speak itself cannot be a basis for finding the workman guilty of the charge. The non-examination of eyewitness is fatal. The Accident Committee report itself cannot form the sole basis. It is not mentioned in the charge sheet that the drivers of both vehicles are negligent, whereas the Accident Committee held that both vehicles were driven at high speed. No attempt is made by the management to prove the charge by placing eyewitness account of passenger. Thus, the Tribunal came to the conclusion that there is no sufficient evidence to prove the charges, and set aside the removal order and directed the management/petitioner herein to reinstate the workman with continuity of service, attendant benefits and half of the back wages.

4. I am of the considered opinion that the Tribunal was swayed by the fact that there was no sufficient evidence and came to the conclusion that the respondent/workman was not guilty of the offence.

5. In a domestic enquiry sufficiency of evidence could not be taken into consideration. If there is some evidence that itself is enough to prove the charges. In fact, in this case while appreciating the evidence, it is observed that an attempt was made before the enquiry officer to demonstrate the negligent act by drawing a sketch etc., without examining the eyewitness. The only material placed was the statement of the workman who has been involved in the accident. The enquiry officer has stated that there is no cross-examination of B.V.S.Subbarao regarding his opinion and hence there is admission made by the workman. While disagreeing with the statement of the enquiry officer, the Tribunal further observed that if the same principles have to be applied, the driver was not cross-examined by the department. Such conclusion while evaluating the domestic enquiry is not appreciated. I am of the opinion that the Tribunal itself

while taking the matter leniently, further directed the management to grant attendant benefits and also half of the back wages, which may not be proper in the facts and circumstances of the case. The accident occurred in the middle of the road, killing one passenger from the lorry and injuring six passengers from the bus. There was no proper explanation on the part of the respondent/workman.

6. In fact, in a case of this nature, there may not be any direct witness available, and only the sketch and the report of the Accident Committee will be taken into consideration. In this case though the Preliminary Enquiry Committee formed an opinion, the said person was not cross-examined by the petitioner/management. Under those circumstances, I am of the considered opinion that the Tribunal was not right in granting relief of reinstatement with continuity of service and half of the back wages and attendant benefits. It is brought to my notice that the respondent/workman has already been reinstated into service in pursuance of the award passed by the Tribunal and he is working as on date. In those circumstances the award of the Tribunal is liable to be modified as under:

> " The Respondent (Management) is directed to reinstate the petitioner with continuity of service, but without any attendant benefits in respect of increments and one-fourth of the back wages."

7. While admitting the writ petition, this Court granted a conditional interim order of depositing 50% of the back wages, which comes to one-fourth of the wages, and the same was deposited and the respondent/workman withdrew the same without furnishing any security. Therefore, in view of the above conclusions the amount already paid need not collected. However, if any attendant benefits were paid as per the award of the Tribunal, the same shall be recovered from the salary of the respondent/workman.

8. Accordingly, the Writ Petition is allowed to the extent as indicated above. No costs.

dsr

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this the Thursday, Second day of December, Two thousand and four.

ASSISTANT REGISTRAR

To:

1. The Presiding Officer,

Industrial Tribunal-cum-Labour Court,

Godavarikhani

2. Two CD copies.